

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

CrI.MC.No. 3569 of 2007()

CP.26/2006 OF JUDICIAL MAGISTRATE COURT, KOTHAMANGALAM

.....

PETITIONER: 3RD ACCUSED

**BABY, AGED 46 YEARS, S/O. YOHANNAN,
KOMMALAKUZHI HOUSE, PALAVAN PADI,
VADATTUPARA, KOTHAMANGALAM.**

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: COMPLAINANT & STATE

**STATE OF KERALA, REP. BY
EXCISE INSPECTOR, KOTHAMANGALAM EXCISE RANGE,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R. BASANT, J.

.....
Cri.M.C. No. 3569 OF 2007
.....

Dated this the 28th day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences under section 8 of the Kerala Abkari Act. He is arrayed as the 3rd accused. According to the petitioner, he has not been given any information about the pendency of such proceedings against him. Either at the crime stage or after the filing of the charge sheet, the petitioner has not been informed by the pendency of such proceedings. Hence, he could not enter appearance and seek bail. The petitioner now finds that the investigation is complete. Final report has already been filed. The learned Magistrate has registered committal proceedings and has issued a non-bailable warrant to procure the arrest of the petitioner. Such warrant of arrest is chasing the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His failure/omission to appear earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But

he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in ***Alice George vs. Deputy Superintendent of Police*** [2003 (1) KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of

surrender itself.

5. Needless to say the claim of the petitioner for bail has to be considered by the learned Magistrate on merits and appropriate orders shall be passed. The learned Magistrate must consider the application for bail in the light of the decision reported in ***Sukumari Vs. State of Kerala*** [2001 (2) KLT 22].

(R.BASANT, JUDGE)

aks